



MILPITAS PLANNING COMMISSION STAFF REPORT

August 24, 2016

APPLICATION:	Conditional Use Permit (P-UP16-0009). A request for a Conditional Use Permit to allow the installation of a small cell antenna on an existing light pole within the right of way near the intersection of Arizona Avenue and Oregon Way.
RECOMMENDATION:	Staff recommends that the Planning Commission: Adopt Resolution No. 16-025 approving Conditional Use Permit (P-UP16-0009), subject to the attached Conditions of Approval
LOCATION:	
Address/APN:	Near 1043 Oregon Way (APN 026-28-001)
Area of City:	Southeast corner of Oregon Way and Arizona Avenue
PEOPLE:	
Project Applicant:	Mobilitie, LLC
Consultant(s):	David Downs, CA Transmission Network, LLC
Property/Business Owner:	City of Milpitas (owner of street light pole)
Project Planner:	Michael Fossati
LAND USE:	
General Plan Designation:	Regional Sub Center (RSC)
Zoning District:	Commercial (C1)
Overlay District:	None
ENVIRONMENTAL:	The proposed project, which includes installation of a new cellular equipment, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the Guidelines for Implementation of CEQA. This Class 3 exemption applies to new construction of limited small new facilities; installation of small, new equipment and facilities in small structures.

EXECUTIVE SUMMARY

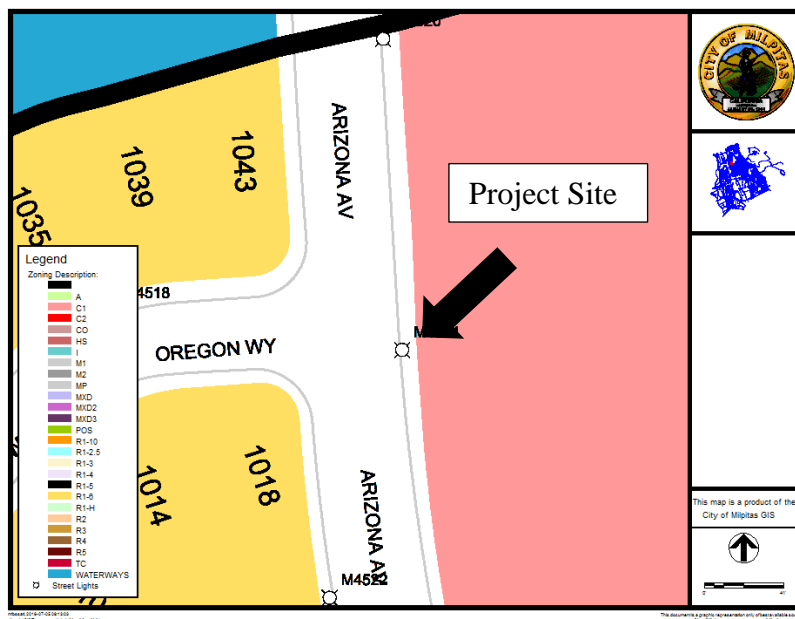
The applicant requests a Conditional Use Permit for the construction of a new small cell site within the public right of way on an existing street light pole. The project proposes the installation of a three-foot-tall cellular antenna, and associated equipment, to be installed directly on the pole. The cellular antenna would be installed on top of the pole. The equipment associated with the cellular antenna would be attached to the pole between seven and 24 feet above ground level. Neither the antenna nor the equipment would be accessible to the public,

due to their placement on the upper portion of the pole. Per City Code, a Conditional Use Permit is required for the installation of new telecommunication facilities that do not meet the guidelines for exemption, as prescribed in City Code Section XI-10-13.09.

Map 1 Project Location



Map 2 Project Zoning Map



BACKGROUND

An existing light pole is located at the intersection of Oregon Way and Arizona Avenue within the northern portion of Milpitas. The street light is located along the eastern border of Arizona Avenue.

The Application

On May 12, 2016, an application was submitted by David Downs of CA Transmission Network, LLC, for a Conditional Use Permit. Following is a summary of the request:

- *Conditional Use Permit:* Required to allow a small cell site to be constructed in the right of way on top of an existing light pole.

It was later determined that CA Transmission Network, LLC is not a public utility as it does not have a certificate of public convenience and necessity (“CPCN”) issued by the California Public Utilities Commission (“CPUC”), and the company also is not a Commercial Mobile Radio Service provider so it has not filed a Wireless Identification Registration with the CPUC. However, CA Transmission Network, LLC’s parent, Mobilitie, LLC does have a CPCN and so the application is being processed with Mobilitie, LLC as the applicant.

PROJECT DESCRIPTION

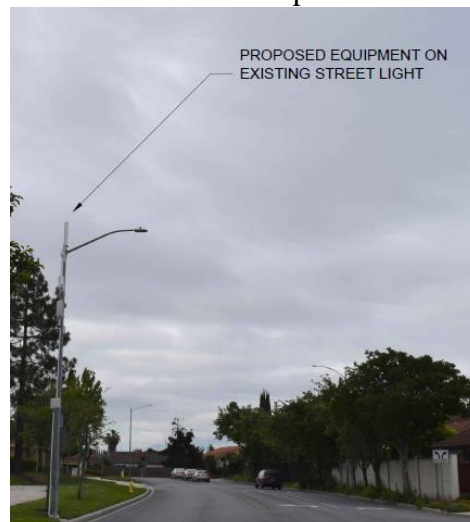
Overview

The applicant requests a construction of a small cell site within the existing right of way. The construction would come in the form of a new cellular antenna, and associated equipment to be installed on an existing light pole. The existing light pole is 26 feet in height. The existing light pole (with cellular antenna) would be approximately 29 feet in height. All equipment associated with the antenna, such as distribution panel, radio remote unit, and disconnect switch, would be installed directly onto the pole. The antenna itself would be installed on top of the light pole.

Existing



Proposed



Location and Context

The project is located within the right-of-way, east a retail commercial building and parking lot. Below is a table summarizing the project properties land use designation and surrounding uses.

General Plan Designation	RSC – Regional Sub-Center
Zoning District	C1 – Commercial
Site Size	N/A
Present Use	Right-of-Way – Street Light
Surrounding Zoning and Uses	
North:	Right-of-Way; Arizona Avenue
South:	Right-of-Way; Arizona Avenue
East:	Commercial; Little Caesar's / Burrito Express
West:	Residential; Single-Family Residential
Access	N/A.

PROJECT ANALYSIS

General Plan Conformance

The project, as proposed is consistent with the guiding principles of the General Plan, as described below:

	Policy	Conformance
General Plan	2.d-G-1 <i>Provide all possible community facilities and utilities of the highest standards commensurate with the present and anticipated needs of Milpitas, as well as any special needs of the region.</i>	<i>The project, as proposed, will provide additional data capacity for telecommunication devices that are a need for existing and future community residents.</i>

Zoning Conformance

The proposed project is properly one for which a Conditional Use Permit could be authorized in compliance with the City's Zoning Ordinance in that the City's Zoning Ordinance provides that wireless telecommunication facilities are conditional uses in all zoning districts. The project is not anticipated to create any negative impacts to surrounding land uses in terms of noise or odors. As proposed, the project would comply with the Federal Communications Commission (FCC) standards for radio frequency ("RF") emissions, as it would expose the general public to less than 1% of the exposure limits regarding radio frequency emissions allowed by the FCC.

The proposed facility is not anticipated to impact the visual aesthetics of the area because it would be located above a light pole, and out of the typical line-of-sight of pedestrians and community members, and painted a color to match the pole.

Development Standards

Milpitas Municipal Code Section XI-10-13.09 governs Wireless Communication Facilities within the City of Milpitas. Per the Municipal Code, *the installation of antennas and wireless communication facilities may affect the public health, safety and welfare, as well as the aesthetic quality of life by creating unattractive appurtenances to building and open areas, by blocking and degrading views, and by creating visual clutter.* The project, as proposed, would not significantly affect public health, safety and welfare or the aesthetic quality of life due to its placement on the existing light pole, its compliance with federal limits on maximum permissible exposure to RF emissions (less than one percent of the general public exposure limit), and its physical distance from pedestrians and community members.

The applicant proposes no changes to the existing zoning standards. There is no height restriction for utilities within the commercial zoning district. Parking, lot coverage, or landscaping will not be affected by the proposed use. Because the proposed project involves an antenna addition to City-owned light pole fixture within the public right-of-way, conditions that the applicant obtain an encroachment permit from the Engineering Department and enter into a license agreement with the City have been added to the Conditions of Approval.

FINDINGS FOR APPROVAL

A finding is a statement of fact relating to the information that the Planning Commission has considered in making a decision. Findings shall identify the rationale behind the decision to take a certain action. Staff has found that the proposed project is consistent with the General Plan, Zoning Ordinance, and all required Findings.

Conditional Use Permit (Section XI-10-57.04-1(F))

- a. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

The project meets this finding given that the RF Site Compliance Report (**Attachment C**) prepared to analyze the project's compliance with relevant federal RF emissions regulations finds that the maximum power density of the facility is less than 1% of the FCC's Occupational limit and General Public limit thresholds. In addition, the project shall be required to install RF emissions alert signs and provide the appropriate safeguards to reduce exposure to RF emissions. As such, the wireless communication facility at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.

- b. *The proposed use is consistent with the Milpitas General Plan.*

The project meets this finding because it will provide additional data capacity for wireless telecommunication services that are needed for existing and future community residents, which

is consistent with the guiding principle in the Milpitas General Plan in that the city should make land use decisions that improve the City's fiscal condition by managing the City's future growth in an orderly, planned manner that is consistent with the City's ability to provide efficient and economical public services, to maximize the use of existing and proposed public facilities, and to achieve equitable sharing of the cost of such services and facilities, per Policy 2.d-G-1.

c. The proposed use is consistent with the Milpitas Zoning Ordinance.

The project is consistent with this finding because wireless communication facilities are conditionally permitted uses in all zoning districts and it conforms to all applicable standards set forth in Section XI-10-13.09 (Wireless Communications Facilities) of the Zoning Ordinance, as well as establishes consistency with the General Plan by providing utilities of the highest standards commensurate with the present and anticipated needs of the existing and future community. As proposed, the use will not impact parking requirements or height limits, substantially degrade views from the public right-of-way, or detract from the character of the community.

ENVIRONMENTAL REVIEW

The project is exempt from CEQA based on a Categorical Exemption pursuant to Section 15303, Class 3 of the CEQA Guidelines because the project consists of the construction and location of a small facility, where only minor modifications are made to the exterior of the structure.

PUBLIC COMMENT/OUTREACH

Staff provided public notice of the application in accordance with City and State public noticing requirements. At the time of publishing this report, there have not been public comments received. A notice was published in the Milpitas Post on August 12th, 2016. In addition, 629 notices were sent to owners and occupants within 1,000 feet of the project site. A public notice was also posted on the project site, on the City's Website, www.ci.milpitas.ca.gov, and at City Hall.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission:

1. Open the Public Hearing;
2. Close the Public Hearing;
3. Adopt Resolution 16-025 approving the Conditional Use Permit (P-UP16-0009), to allow the construction of a small cell site with associated equipment to be installed on an existing light pole, subject to the findings and conditions of approval.

Attachments

A: Resolution No. 16-025

B: Project Plans

C: Radio Frequency Site Compliance Report, dated April 21, 2016